

98TH CONGRESS
1ST SESSION

H. R. 3142

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, to provide a remedy against the United States with respect to constitutional torts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1983

Mr. SAM B. HALL, JR. (for himself, Mr. MAZZOLI, Mr. FRANK, Mr. SCHUMER, Mr. BERMAN, and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, to provide a remedy against the United States with respect to constitutional torts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—FEDERAL TORT CLAIMS AMENDMENTS

4 EXCLUSIVITY OF REMEDY

5 SEC. 101. Section 2679(b) of title 28, United States

6 Code, is amended to read as follows:

29

1 “(b) The remedy against the United States provided by
2 sections 1346(b)(1) and 2672 of this title for claims for injury
3 or loss of property or personal injury or death resulting from
4 the negligent or wrongful act or omission of any employee of
5 the Government while acting within the scope of his office or
6 employment is exclusive of any other civil action or proceed-
7 ing arising out of or relating to the same subject matter
8 against the employee of the Government whose act or omis-
9 sion gave rise to the claim, or against the estate of such
10 employee.”.

11 CERTIFICATION BY ATTORNEY GENERAL

12 SEC. 102. Section 2679(d) of title 28, United States
13 Code, is amended to read as follows:

14 “(d)(1) Upon certification by the Attorney General that
15 the defendant employee was acting within the scope of his
16 office or employment at the time of the incident out of which
17 the suit arose, any civil action or proceeding described in
18 subsection (c) which is commenced in a United States district
19 court shall be deemed an action against the United States
20 under the provisions of this title and all references thereto,
21 and the United States shall be substituted as the party de-
22 fendant. After such substitution the United States shall have
23 available all defenses to which it would have been entitled if
24 the action had originally been commenced against the United
25 States under this chapter and section 1346(b)(1).

1 “(2) Upon certification by the Attorney General that the
2 defendant employee was acting within the scope of his office
3 or employment at the time of the incident out of which the
4 suit arose, any civil action or proceeding described in subsec-
5 tion (c) which is commenced in a State court shall be re-
6 moved, without bond, at any time before trial, by the Attor-
7 ney General to the district court of the United States of the
8 district and division embracing the place in which the action
9 or proceeding is pending and shall be deemed an action
10 brought against the United States under the provisions of this
11 title and all references thereto, and the United States shall be
12 substituted as the party defendant. After such substitution
13 the United States shall have available all defenses to which it
14 would have been entitled if the action had originally been
15 commenced against the United States under this chapter and
16 section 1346(b)(1).

17 “(3) The certification by the Attorney General under
18 paragraph (1) or (2) of this subsection that the defendant em-
19 ployee was acting within the scope of his office or employ-
20 ment shall be binding and conclusive on the United States
21 and the defendant employee. In the event that the Attorney
22 General has not made such a certification, the defendant em-
23 ployee may request the district court of the United States in
24 which the suit has been filed or to which the suit would be
25 removed to find and certify that such employee was acting

1 within the scope of his office or employment. In a suit re-
2 moved from a State court under paragraph (2), should the
3 district court determine on a hearing on a motion to remand
4 held before a trial on the merits that the employee whose act
5 or omission gave rise to the suit was not acting within the
6 scope of his office or employment, the case shall be remanded
7 to the State court. Any case so remanded shall be subject to
8 any right of the employee to have the case removed to the
9 appropriate district court under section 1442 or 1442a of this
10 title, and the thirty-day period provided in section 1446(b) of
11 this title for filing a petition for removal shall be deemed to
12 begin on the date on which the case is remanded to the State
13 court.

14 “(4) Whenever an action or proceeding under this chap-
15 ter is precluded because of the availability of a remedy, com-
16 pensation, or other benefits from the United States as pro-
17 vided by any other law, the action or proceeding shall be
18 dismissed, but in that event the running of any limitation of
19 time for commencing or filing an application or claim in a
20 proceeding for such other remedy, compensation, or benefits
21 shall be deemed to have been suspended during the period in
22 which the action or proceeding was pending under this
23 chapter.

24 “(5) Whenever an action brought against a defendant
25 employee in which the United States is substituted as the

1 party defendant under this subsection is dismissed for failure
2 to first present a claim to the appropriate Federal agency
3 under section 2675(a) of this title, the claim shall be deemed
4 to be timely presented under section 2401(b)(1) of this title if
5 (A) the claim would have been timely if filed on the date the
6 action against the defendant employee was commenced, and
7 (B) the claim is presented to the appropriate Federal agency
8 within sixty days after dismissal of the action.”.

9 **DEFINITION OF FEDERAL AGENCY**

10 **SEC. 103.** Section 2671 of title 28, United States Code,
11 is amended to read as follows:

12 **“§ 2671. Definitions**

13 “As used in this chapter and sections 1346(b)(1) and
14 2401(b)(1) of this title—

15 “(1) the term ‘Federal agency’ includes the
16 United States Senate, the United States House of Rep-
17 resentatives, the courts of the United States (including
18 the United States Claims Court, the courts of the terri-
19 tories of the United States, and any agency of the judi-
20 cial branch), any executive department, military de-
21 partment, independent establishment of the United
22 States, corporation primarily acting as an instrumental-
23 ity or agency of the United States, and any other es-
24 tablishment of the United States (including the Execu-

1 tive Office of the President), but does not include any
2 contractor with the United States;

3 “(2) the term ‘employee of the Government’ in-
4 cludes officers and employees in the executive, judicial,
5 and legislative branches of the Federal Government,
6 members of the military or naval forces of the United
7 States, members of the National Guard while engaged
8 in training or duty under section 316, 502, 503, 504,
9 or 505 of title 32, and persons acting on behalf of a
10 Federal agency in an official capacity, temporarily or
11 permanently in the service of the United States,
12 whether with or without compensation; and

13 “(3) the term ‘acting within the scope of his office
14 or employment’, in the case of a member of the mili-
15 tary or naval forces of the United States or a member
16 of the National Guard as defined in section 101(3) of
17 title 32, means acting in the line of duty.

18 For purposes of this chapter, the functions of the head of a
19 Federal agency for the judicial branch shall be performed by
20 the Director of the Administrative Office of the United States
21 Courts.”.

22 TITLE II—CONSTITUTIONAL TORTS

23 JURISDICTION OF DISTRICT COURTS

24 SEC. 201. Section 1346(b) of title 28, United States
25 Code, is amended—

1 (1) by inserting “(1)” after “(b)”;

2 (2) by striking out “the United States District
3 Court for the District of the Canal Zone and”; and

4 (3) by adding at the end thereof the following new
5 paragraph:

6 “(2) Subject to the provisions of chapter 172 of this
7 title, the district courts, together with the District Court of
8 the Virgin Islands, shall have exclusive jurisdiction of civil
9 actions on claims for money damages based on constitutional
10 torts.”.

11 CONSTITUTIONAL TORTS PROCEDURE

12 SEC. 202. Title 28 of the United States Code is amend-
13 ed by inserting after chapter 171 the following new chapter:

14 “CHAPTER 172—CONSTITUTIONAL TORTS

“Sec.

“2691. Definitions.

“2692. Administrative adjustment of claims.

“2693. Liability of the United States.

“2694. Disposition by Federal agency as prerequisite; evidence.

“2695. Jury trial.

“2696. Judgment as bar.

“2697. Compromise.

“2698. Attorney fees; penalty.

“2699. Exclusiveness of remedy.

“2700. Administrative action concerning employee.

“2701. Exceptions.

15 “§ 2691. Definitions

16 “As used in this chapter and sections 1346(b)(2) and
17 2401(b)(2) of this title—

18 “(1) the term ‘Federal agency’ includes the
19 United States Senate, the United States House of Rep-

1 representatives, the courts of the United States (including
2 the United States Claims Court, the courts of the terri-
3 tories of the United States, and any agency of the judi-
4 cial branch), any executive department, military de-
5 partment, independent establishment of the United
6 States, corporation primarily acting as an instrumentality
7 or agency of the United States, and any other es-
8 tablishment of the United States (including the Execu-
9 tive Office of the President), but does not include any
10 contractor with the United States;

11 “(2) the term ‘employee of the Government’ in-
12 cludes officers and employees in the executive, judicial,
13 and legislative branches of the Federal Government,
14 members of the military or naval forces of the United
15 States, members of the National Guard while engaged
16 in training or duty under section 316, 502, 503, 504,
17 or 505 of title 32, and persons acting on behalf of a
18 Federal agency in an official capacity, temporarily or
19 permanently in the service of the United States,
20 whether with or without compensation;

21 “(3) the term ‘acting within the scope of his office
22 or employment’, in the case of a member of the mili-
23 tary or naval forces of the United States or a member
24 of the National Guard as defined in section 101(3) of
25 title 32, means acting in the line of duty; and

1 “(4) the term ‘constitutional tort’ means a tort
2 arising under the Constitution of the United States
3 which is caused by the act or omission of an employee
4 of the Government while acting within the scope of his
5 office or employment.

6 For purposes of this chapter, the functions of the head of a
7 Federal agency for the judicial branch shall be performed by
8 the Director of the Administrative Office of the United States
9 Courts.

10 **“§ 2692. Administrative adjustment of claims**

11 “(a) The head of each Federal agency may, in accord-
12 ance with regulations prescribed by the Attorney General,
13 compromise and settle any claim for money damages based
14 on a constitutional tort. No award, compromise, or settle-
15 ment may be made under this section without the prior writ-
16 ten approval of the Attorney General.

17 “(b) Any award, compromise, settlement, or determina-
18 tion made under this section shall be final and conclusive on
19 the United States, except when procured by means of fraud.

20 “(c) Payment of any award, compromise, or settlement
21 made under this section or made by the Attorney General in
22 any amount under section 2697 of this title shall be paid in a
23 manner similar to judgments and compromises in like causes.
24 Appropriations or funds available for the payment of such
25 judgments and compromises shall be available for the pay-

1 ment of awards, compromises, or settlements under this
2 chapter.

3 “(d) The acceptance by a claimant of any award, com-
4 promise, or settlement made under this section or section
5 2697 of this title shall be final and conclusive on the claim-
6 ant, and shall constitute a complete release of any claim
7 against the United States and against the employee of the
8 Government whose act or omission gave rise to the claim, by
9 reason of the same subject matter.

10 **“§ 2693. Liability of the United States**

11 “The United States shall be liable, with respect to a
12 constitutional tort, to the extent that liability for such tort is
13 recognized or provided by applicable Federal law, but shall
14 not be liable for interest prior to judgment or for punitive
15 damages. With respect to any claim for money damages
16 based on a constitutional tort, the United States shall be
17 liable for an amount not greater than either (1) actual dam-
18 ages, or (2) nominal damages in an amount which is the
19 greater of (A) \$2,000, or (B) in the case of a continuing viola-
20 tion, \$200 per day for each violation. If the conduct giving
21 rise to the tort claim was undertaken with the malicious in-
22 tent to cause a deprivation of constitutional rights, the
23 court shall award, in addition, damages of not more than
24 \$100,000. The United States may not assert as a defense to
25 a claim based on a constitutional tort under this chapter the

1 qualified immunity of the employee of the Government whose
2 act or omission gave rise to the claim, or his reasonable good-
3 faith belief in the lawfulness of his conduct, but the United
4 States may assert the absolute immunity of the employee.

5 **“§ 2694. Disposition by Federal agency as prerequisite;**
6 **evidence**

7 “(a) An action shall not be instituted upon a claim
8 against the United States for money damages based on a
9 constitutional tort unless the claimant shall have first pre-
10 sented the claim to the appropriate Federal agency and that
11 claim shall have been finally denied by the agency in writing
12 and sent to the claimant by certified or registered mail. The
13 failure of an agency to make final disposition of a claim
14 within six months after it is filed shall, at the option of the
15 claimant any time thereafter, be deemed a final denial of the
16 claim for purposes of this section. The provisions of this sub-
17 section shall not apply to such claims as may be asserted
18 under the Federal Rules of Civil Procedure by third-party
19 complaint, cross-claim, or counterclaim.

20 “(b) An action under this section shall not be instituted
21 for any sum in excess of the amount of the claim presented to
22 the Federal agency, except where the increased amount is
23 based upon newly discovered evidence not reasonably discov-
24 erable at the time of presenting the claim to the Federal

1 agency, or upon allegation and proof of intervening facts, re-
2 lating to the amount of the claim.

3 “(c) Disposition of any constitutional tort claim by the
4 Attorney General or other head of a Federal agency under
5 this chapter shall not be competent evidence of liability or
6 amount of damages.

7 **“§ 2695. Jury trial**

8 “Any action brought pursuant to this chapter upon a
9 claim for money damages based on a constitutional tort shall,
10 at the request of any party to such action, be tried by the
11 court with a jury.

12 **“§ 2696. Judgment as bar**

13 “The judgment in an action under section 1346(b)(2) of
14 this title shall constitute a complete bar to any action by the
15 claimant involved, by reason of the same subject matter,
16 against the employee of the Government whose act or omis-
17 sion gave rise to the claim.

18 **“§ 2697. Compromise**

19 “The Attorney General or his designee may arbitrate,
20 compromise, or settle any claim cognizable under section
21 1346(b)(2) of this title, after the commencement of an action
22 on that claim.

23 **“§ 2698. Attorney fees; penalty**

24 “(a) Any claimant to whom a judgment is awarded
25 under section 1346(b)(2) of this title, or to whom an award,

1 compromise, or settlement is made under section 2697 or
2 2692 of this title shall, in addition to such judgment, award,
3 compromise, or settlement, be entitled to receive a reason-
4 able attorney's fee and other litigation costs reasonably in-
5 curred, including attorney fees and costs attributable to proc-
6 essing an administrative claim under section 2692. The
7 amount of such attorney's fee may not exceed 25 per centum
8 of any judgment rendered under section 1346(b)(2) of this
9 title or any award, compromise, or settlement made under
10 section 2697 of this title, or 20 per centum of any award,
11 compromise, or settlement made under section 2692 of this
12 title.

13 “(b) In any action under section 1346(b)(2) of this title,
14 where judgment is for the United States, the United States
15 shall be entitled to receive a reasonable attorney's fee and
16 other litigation costs. The amount of such attorney's fee may
17 not exceed 25 per centum of the claim upon which the action
18 was brought.

19 “(c) Any attorney who charges, demands, receives, or
20 collects for services rendered in connection with a judgment,
21 award, compromise, or settlement described in subsection (a)
22 any amount in excess of that allowed under subsection (a)
23 shall, if recovery be had, be fined not more than \$2,000 or
24 imprisoned not more than one year, or both.

1 **“§ 2699. Exclusiveness of remedy**

2 “(a) The authority of any Federal agency to sue and be
3 sued in its own name shall not be construed to authorize suits
4 against such Federal agency on claims which are cognizable
5 under section 1346(b)(2) of this title, and the remedies pro-
6 vided by this title in such cases shall be exclusive.

7 “(b) The remedy against the United States provided by
8 sections 1346(b)(2) and 2692 of this title for claims for money
9 damages based on constitutional torts is exclusive of any
10 other civil action or proceeding arising out of or relating to
11 the same subject matter against the employee of the Govern-
12 ment whose act or omission gave rise to the claim, or against
13 the estate of such employee.

14 “(c) The Attorney General shall defend any civil action
15 or proceeding brought in any court against any employee of
16 the Government or against the estate of such employee for
17 money damages based on any constitutional tort. The em-
18 ployee against whom such civil action or proceeding is
19 brought (or the administrator or executor of the employee’s
20 estate against which the action or proceeding is brought)
21 shall deliver, within such time after the date of service or
22 knowledge of service as determined by the Attorney General,
23 all process served upon the employee or an attested true copy
24 thereof to the person designated to receive such papers by
25 the head of the Federal agency which employed the employee
26 at the time of the employee’s alleged act or omission that

1 gave rise to the action or proceeding, or to the person who is
2 or was the immediate superior of that employee in that Fed-
3 eral agency. Such person shall promptly furnish copies of the
4 pleadings and process in the action or proceeding to the
5 United States attorney for the district in which the proceed-
6 ing is brought, to the Attorney General, and to the head of
7 that Federal agency.

8 “(d)(1) Upon certification by the Attorney General that
9 the defendant employee was acting within the scope of his
10 office or employment at the time of the incident out of which
11 the suit arose, any civil action or proceeding described in
12 subsection (c) which is commenced in a United States district
13 court shall be deemed an action against the United States
14 under the provisions of this title and all references thereto,
15 and the United States shall be substituted as the party de-
16 fendant. After such substitution the United States shall have
17 available all defenses to which it would have been entitled if
18 the action had originally been commenced against the United
19 States under this chapter and section 1346(b)(2).

20 “(2) Upon certification by the Attorney General that the
21 defendant employee was acting within the scope of his office
22 or employment at the time of the incident out of which the
23 suit arose, any civil action or proceeding described in subsec-
24 tion (c) which is commenced in a State court shall be re-
25 moved, without bond, at any time before trial, by the Attor-

1 ney General to the district court of the United States of the
2 district and division embracing the place in which the action
3 or proceeding is pending, and shall be deemed an action
4 brought against the United States under the provisions of this
5 title and all references thereto, and the United States shall be
6 substituted as the party defendant. After such substitution
7 the United States shall have available all defenses to which it
8 would have been entitled if the action had originally been
9 commenced against the United States under this chapter and
10 section 1346(b)(2).

11 “(3) The certification by the Attorney General under
12 paragraph (1) or (2) of this subsection that the defendant em-
13 ployee was acting within the scope of his office or employ-
14 ment shall be binding and conclusive on the United States
15 and the defendant employee. In the event that the Attorney
16 General has not made such a certification, the defendant em-
17 ployee may request the district court of the United States in
18 which the suit has been filed or to which the suit would be
19 removed to find and certify that such employee was acting
20 within the scope of his office or employment. In a suit re-
21 moved from a State court under paragraph (2), should the
22 district court determine on a hearing on a motion to remand
23 held before a trial on the merits that the employee whose act
24 or omission gave rise to the suit was not acting within the
25 scope of his office or employment, the case shall be remanded

1 to the State court. Any case so remanded shall be subject to
2 any right of the employee to have the case removed to the
3 appropriate district court under section 1442 or 1442a of this
4 title, and the thirty-day period provided in section 1446(b) of
5 this title for filing a petition for removal shall be deemed to
6 begin on the date on which the case is remanded to the State
7 court.

8 “(4) Whenever an action or proceeding brought against
9 a defendant employee in which the United States is substitut-
10 ed as the party defendant under this subsection is dismissed
11 for failure to first present a claim to the appropriate Federal
12 agency under section 2694(a) of this title, the claim shall be
13 deemed to be timely presented under section 2401(b)(2) of
14 this title if (A) the claim would have been timely if filed on
15 the date the action against the defendant employee was com-
16 menced, and (B) the claim is presented to the appropriate
17 Federal agency within sixty days after dismissal of the
18 action.

19 “(e) The Attorney General may compromise or settle
20 any claim asserted in any civil action or proceeding described
21 in subsection (c), in the manner provided in section 2697 of
22 this title, and with the same effect.

23 **“§ 2700. Administrative action concerning employee**

24 “Where an action or proceeding under section
25 1346(b)(2) or 2692 of this title based on a constitutional tort

1 results in a judgment against the United States or an award,
2 compromise, or settlement paid by the United States, the At-
3 torney General shall forward the matter to the head of the
4 Federal agency which employed the employee at the time of
5 the employee's alleged act or omission giving rise to the
6 claim upon which the action or proceeding was based, for
7 such further administrative investigation or disciplinary
8 action as may be appropriate. In any administrative proceed-
9 ing relating to such investigation or disciplinary action, the
10 employee may assert as a defense his reasonable good-faith
11 belief in the lawfulness of his conduct.

12 **“§ 2701. Exceptions**

13 “The provisions of this chapter and section 1346(b)(2) of
14 this title shall not apply to—

15 “(1) any claim arising from the activities of the
16 Tennessee Valley Authority;

17 “(2) any claim arising from the activities of the
18 Panama Canal Commission; or

19 “(3) any claim arising from the activities of a
20 Federal land bank, a Federal intermediate credit bank,
21 or a bank for cooperatives.”.

22 **JURY TRIAL**

23 **SEC. 203.** Section 2402 of title 28, United States Code,
24 is amended by inserting “or 1346(b)(2)” after “1346(a)(1)”.

1 TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28,
2 UNITED STATES CODE

3 SEC. 204. (a) The table of chapters for part VI of title
4 28, United States Code, is amended by inserting after the
5 item relating to chapter 171 the following new item:

“172. Constitutional Torts 2691”.

6 (b) Section 2401(b) of title 28, United States Code, is
7 amended—

8 (1) by inserting “cognizable under section
9 1346(b)(1) or chapter 171 of this title” after “United
10 States”;

11 (2) by inserting “(1)” immediately after “(b)”; and

12 (3) by adding at the end thereof the following:

13 “(2) A claim for money damages based on a constitu-
14 tional tort against the United States cognizable under section
15 1346(b)(2) or chapter 172 of this title shall be forever barred
16 unless it is presented in writing to the appropriate Federal
17 agency within two years after such claim accrues or unless
18 action is begun within six months after the date of mailing,
19 by certified or registered mail, of notice of final denial of the
20 claim by the agency to which it was presented.”.

21 (c) Section 2674 of title 28, United States Code, is
22 amended by inserting immediately after “claims” the follow-
23 ing: “to which section 1346(b)(1) of this title applies”.

24 (d) Sections 2676, 2677, 2678, and 2679 of title 28,
25 United States Code, are amended by striking out “1346(b)”

1 each place it appears and inserting in lieu thereof
2 “1346(b)(1)”.

3 (e) Section 2680 of title 28, United States Code, is
4 amended—

5 (1) by striking out “1346(b)” and inserting in lieu
6 thereof “1346(b)(1)”; and

7 (2) by amending subsection (h) to read as follows:

8 “(h) Any claim arising out of libel, slander, misrepresen-
9 tation, deceit, or interference with contract rights.”.

10 (f) Section 1402(b) of title 28, United States Code, is
11 amended by striking out “subsection (b)” and inserting in lieu
12 thereof “subsections (b)(1) and (b)(2)”.

13 **TITLE III—AMENDMENTS TO OTHER LAWS;**

14 **APPLICABILITY OF ACT**

15 **MEDICAL MALPRACTICE PROVISIONS**

16 **SEC. 301.** (a)(1) Subsections (a) through (d) of section
17 4116 of title 38, United States Code, are repealed.

18 (2) Subsection (e) of such section is amended—

19 (A) by striking out “(e)”;

20 (B) by striking out “person to whom the immunity
21 provisions of this section apply (as described in subsec-
22 tion (a) of this section),” and inserting in lieu thereof
23 “employee of the Department of Medicine and Sur-
24 gery”; and

1 (C) by striking out “1346(b)” and inserting in lieu
2 thereof “1346(b)(1)”.

3 (3) The section heading of section 4116 of title 38,
4 United States Code, is amended to read as follows:
5 **“§ 4116. Malpractice protection”.**

6 (4) The table of sections for chapter 73 of title 38,
7 United States Code, is amended by amending the item relat-
8 ing to section 4116 to read as follows:

“4116. Malpractice protection.”.

9 (b)(1) Subsections (a) through (e) of section 224 of the
10 Public Health Service Act (42 U.S.C. 233) are repealed.

11 (2) Subsection (f) of such section is amended by striking
12 out “(f)”.

13 (3) The section heading of section 224 of the Public
14 Health Service Act is amended to read as follows:

15 **“MALPRACTICE PROTECTION”.**

16 (c)(1) Subsections (a) through (e) of section 30 of the
17 State Department Basic Authorities Act of 1956 (22 U.S.C.
18 2702) are repealed.

19 (2) Subsection (f) of such section is amended—

20 (A) by striking out “person to whom the immunity
21 provisions of subsection (a) of this section apply,” and
22 inserting in lieu thereof “employee of the Department
23 of State”;

24 (B) by striking out “1346(b)” and inserting in lieu
25 thereof “1346(b)(1)”; and

1 (C) by redesignating such subsection as subsection

2 (a).

3 (3) Subsection (g) of such section is amended—

4 (A) by inserting “and section 1346(b)(1) and chap-
5 ter 171 of title 28, United States Code” immediately
6 after “For purposes of this section”; and

7 (B) by redesignating such subsection as subsection
8 (b).

9 (d)(1) Subsections (a) through (e) of section 1089 of title
10 10, United States Code, are repealed.

11 (2) Subsection (f) of such section is amended—

12 (A) by striking out “person described in subsection
13 (a)” and inserting in lieu thereof “employee of the
14 armed forces, the National Guard while engaged in
15 training or duty under section 316, 502, 503, 504, or
16 505 of title 32, the Department of Defense, the United
17 States Soldiers’ and Airmen’s Home, or the Central
18 Intelligence Agency”;

19 (B) by striking out “1346(b)” and inserting in lieu
20 thereof “1346(b)(1)”; and

21 (C) by redesignating such subsection as subsection
22 (a).

23 (3) Subsection (g) of such section is amended—

24 (A) by striking out “and” at the end of paragraph
25 (2);

1 (B) by redesignating paragraph (3) as paragraph
2 (4);

3 (C) by inserting after paragraph (2) the following
4 new paragraph:

5 “(3) the Governor of the United States Soldiers’
6 and Airmen’s Home, in the case of an employee of the
7 United States Soldiers’ and Airmen’s Home; and”; and

8 (D) by redesignating such subsection as subsection
9 (b).

10 (4) The section heading of section 1089 of title 10,
11 United States Code, is amended to read as follows:

12 **“§ 1089. Malpractice protection”.**

13 (5) The table of sections for chapter 55 of title 10,
14 United States Code, is amended by amending the item relat-
15 ing to section 1089 to read as follows:

“1089. Malpractice protection.”.

16 (e)(1) Subsections (a) through (e) of section 307 of the
17 National Aeronautics and Space Act of 1958 (42 U.S.C.
18 2458a) are repealed.

19 (2) Subsection (f) of such section is amended—

20 (A) by striking out “(f)”; and

21 (B) by striking out “person described in subsection
22 (a)” and inserting in lieu thereof “employee of the Na-
23 tional Aeronautics and Space Administration”.

1 (3) The section heading of section 307 of the National
2 Aeronautics and Space Act of 1958 is amended to read as
3 follows:

4 “MALPRACTICE PROTECTION”.

5 (f) Section 415(f) of the Domestic Volunteer Service Act
6 (42 U.S.C. 5055(f)) is repealed.

7 OTHER TECHNICAL AMENDMENTS

8 SEC. 302. (a) Section 1401(e) of the Panama Canal Act
9 of 1979 (22 U.S.C. 3761(e)) is amended by striking out
10 “chapter 171” and inserting in lieu thereof “chapters 171
11 and 172”.

12 (b)(1) Section 5(h) of the Peace Corps Act (22 U.S.C.
13 2504(h)) is amended by striking out “the Federal Tort
14 Claims Act and any other Federal tort liability statute,” and
15 inserting in lieu thereof “section 1346(b)(1) and chapter 171
16 of title 28, United States Code, and any other Federal tort
17 liability statute (other than section 1346(b)(2) and chapter
18 172 of such title 28),”.

19 (2) Section 10(j) of the Peace Corps Act (22 U.S.C.
20 2509(j)) is amended in the second sentence—

21 (A) by striking out “references to the Secretary in
22 subsection (b) of such section shall be deemed to be
23 references to the Director of the Peace Corps,”;

24 (B) by striking out “(f)” and inserting in lieu
25 thereof “(a)”; and

1 (C) by striking out “(g)” and inserting in lieu
2 thereof “(b)”.

3 (c) Section 436(a)(3) of the Job Training Partnership
4 Act (29 U.S.C. 1706(a)(3)) is amended by striking out “the
5 Federal tort claims provisions in title 28” and inserting in
6 lieu thereof “section 1346(b)(1) and chapter 171 of title 28”.

7 (d) Section 351 of title 38, United States Code, is
8 amended by striking out “1346(b)” and inserting in lieu
9 thereof “1346(b)(1)”.

10 (e) Section 171 of the Atomic Energy Act of 1954 (42
11 U.S.C. 2221) is amended by striking out “1346” and insert-
12 ing in lieu thereof “1346(a)”.

13 (f)(1) Section 168 of the Energy Security Act (42
14 U.S.C. 8768) is amended by striking out “Federal Tort
15 Claims Act (28 U.S.C. 2671 et seq.)” and inserting in lieu
16 thereof “provisions of section 1346(b)(1) and chapter 171 of
17 title 28, United States Code,”.

18 (2) Section 171(a)(5) of the Energy Security Act (42
19 U.S.C. 8771(a)(5)) is amended by striking out “the Federal
20 Tort Claims Act (28 U.S.C. 2671 et seq.),” and inserting in
21 lieu thereof “section 1346(b)(1) and chapter 171 of title 28,
22 United States Code,”.

23 (g) Section 902(d) of the Merchant Marine Act, 1936
24 (46 U.S.C. 1242(d)), is amended in the first paragraph by
25 striking out “section 24, paragraph 20, and section 145 of

1 the Judicial Code (U.S.C. 1946 edition, title 28, secs. 41(20)
2 and 250)” and inserting in lieu thereof “sections 1346(a) and
3 1491 of title 28, United States Code”.

4 (h) Section 606(e) of the Communications Act of 1934
5 (47 U.S.C. 606(e)) is amended by striking out “paragraph 20
6 of section 24, or by section 145, of the Judicial Code, as
7 amended” and inserting in lieu thereof “sections 1346(a) and
8 1491 of title 28, United States Code”.

9 **APPLICABILITY OF ACT**

10 **SEC. 303. (a)** The amendments made by this Act shall
11 apply to all claims and suits filed after the date of the enact-
12 ment of this Act, and to all claims and suits pending on such
13 date of enactment, except that the provisions of section 2694
14 of title 28, United States Code, as added by section 202 of
15 this Act, shall not apply with respect to suits commenced
16 before such date of enactment.

17 (b) With respect to any suit which, on the date of the
18 enactment of this Act, is pending against a Federal employee
19 in his individual capacity on appeal or pending against a Fed-
20 eral employee in his individual capacity in a State court in
21 which the time for removal pursuant to section 2679(d)(2) or
22 2699(d)(2) of title 28, United States Code (as amended and
23 added by this Act), has expired, the case shall be remanded
24 (in the case of a pending appeal) or removed (in the case of a
25 suit pending in a State court) to the appropriate district court

1 for further proceedings in accordance with section 1346(b)
2 and chapters 171 and 172 of title 28, United States Code (as
3 amended and added by this Act), upon certification by the
4 Attorney General that the defendant employee was acting
5 within the scope of his office or employment at the time of
6 the incident out of which the suit arose. In the event that any
7 such appeal was taken from a judgment rendered in favor of
8 a plaintiff, the judgment shall be binding on the United States
9 if it is substituted as a defendant.

